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June 4, 2003

California Fair Political Practices Commission  
428 "J" Street, Suite 800  
Sacramento, California 95814

**VIA FACSIMILE**  
**AND U.S. MAIL**

**Re: Public Generally Regulations As Applied To General Plan Decisions**  
**Meeting of June 5, 2003 - Item No. 5**

**Dear Commission:**

The County of San Diego appreciates the time and effort that the Fair Political Practices Commission ("FPPC") staff has expended in response to the issue that I have raised. Unfortunately, we are not in agreement. There are a number of points that we would like to make in support of the proposed regulation offered by the County of San Diego. They are:

1. **UNIQUENESS:** Comprehensive General Plan Amendments and zoning revisions applicable to an entire jurisdiction are unique in their scope and in the level of public interest they generate.

- a. San Diego's current process involved four days of hearings at the Planning Commission, with four hundred and seventy-three speakers, and is going into its second day of hearings before the Board of Supervisors.
- b. General Plan policies must be internally consistent. This leaves little opportunity for "self dealing" because the policies must apply across the board. Actions that have comprehensive application should enjoy a presumption that they are in the public interest as a matter of public policy unless there is something about the action that applies uniquely to the public official's property.

Fair Political Practices Commission -2-

June 4, 2003

2. **BALANCE AND PERSPECTIVE:** Two Board members represent virtually the entire unincorporated area of the County, an area close to the size of Connecticut.

- a. Requiring them to abstain deprives virtually everyone in the unincorporated area (approximately one million people) from having their elected representative participate in the most important decision, which affects them.
- b. FPPC staff admits that its position may be viewed as "narrow" but justifies this by arguing that conflict of interest laws should be narrowly construed (p. 13 of Staff Report). This statement typifies both the strength and weakness of one-purpose agencies; their strength is their focus while their weakness is a lack of perspective. Disenfranchising the entire unincorporated area of over a million people is a disastrous result that commands more consideration than a cliché.
- c. "Narrowness" in the construction of conflict of interest laws is not such a compelling goal that it should trump equally important public policy considerations such as the right to representative government.

3. **CONFLICT:** For the public generally exception to come into play there has to be a conflict. The exception recognizes that people with conflicts will be allowed to participate. The question is how broad the exception will be.

- a. In the unique case of a comprehensive General Plan amendment, the exception can be construed broadly without damaging the fabric of the Political Reform because of the scope of the action, the internal consistency requirement and the extraordinary public participation.

4. **UNWORKABLE REGULATIONS:** Staff argues that, "if there is a problem in the public generally analysis, the solution is to make the analysis easier to apply" (p. 9) and then offers an unworkable solution on page 10.

- a. The "easier analysis" requires: (i) consideration of location, zoning, current or potential use, development or income producing potential, size; or (ii) characteristics of the neighborhood including but not limited to traffic, view, privacy, intensity of use, noise levels or air emissions.
- b. This kind of exhaustive study would be even more time consuming and expensive than an appraisal. In reality, it is an illusory exception that would in fact work as a prohibition against participation.

Fair Political Practices Commission -3-

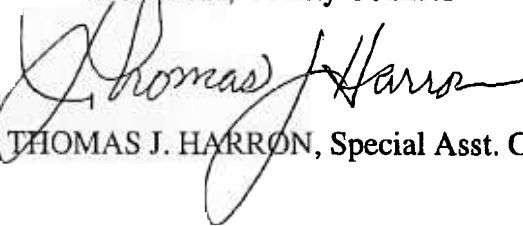
June 4, 2003

5. **BRIGHT LINE RULES:** There seems to be a prejudice against bright line rules and in favor of ad hoc analysis among FPPC staff. (See Staff Report at p. 10.)
- a. Bright line rules make it possible for those of us in government practice to provide advice to our clients with some assurance that the advice is accurate.
  - b. Ad hoc analysis means that only the FPPC will be competent to advise on conflict issues. Governmental law practitioners will be unwilling to put their clients at risk given the potential subjective weighing of factors.
6. **SEGMENTATION:** The proposed regulation is a good idea and will be helpful in many instances.
- a. The consistency requirements in the law regulating General Plans (and zoning) make the segmentation procedure more difficult in this context. The County cannot adopt different standards for the segment in connection with certain general plan elements, than it does for the rest of the jurisdiction.
  - b. For example, the circulation element is next up for San Diego County and the County could not adopt different levels of service or fees for improvements for the segment than it does for the remainder. Dividing up the decision into segments in this circumstance begins to look like a charade.

Again, I would like to express my appreciation for the Commission's and staff's consideration of this extremely difficult and important issue.

Very truly yours,

JOHN J. SANSONE, County Counsel

By 

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